

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

RE: INVESTIGATION BY THE DEPARTMENT OF)	
TELECOMMUNICATIONS AND ENERGY ON)	D.T.E. 02-40
ITS ORDER OPENING INVESTIGATION IN)	
THE PROVISION OF DEFAULT SERVICE)	
)	

SUPPLEMENTAL COMMENTS OF THE CAPE LIGHT COMPACT

The towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County, acting together as the Cape Light Compact (“Compact”), hereby submit to the Department of Telecommunications and Energy (“Department”) their Supplemental Comments in the above-captioned investigation. In making its Supplemental Comments, the Compact endorses the “Joint Statement of Guiding Principles for the Future Provision of Default Service” (“Guiding Principles”) submitted by the Massachusetts Attorney General (“Attorney General”), NSTAR Electric (“NSTAR”), and Massachusetts Community Action Program Directors Association (“MASSCAP”). The Compact also submits the following six points for the Department’s consideration. These points are based upon the Compact’s proven experience as a municipal aggregator in implementing its Pilot Program, which was approved by the Department in D.T.E. 01-63 (2001) to offer a more economical competitive supply alternative on an opt-out basis to Default Service customers in the Compact’s territory.

1) The Compact supports increased use of municipal aggregation as the best way to serve small residential and commercial customers in the competitive markets.

The Compact supports municipal aggregation as the most effective means to bring small residential and commercial consumers into the competitive markets. There is a great potential for additional municipal aggregation programs in the Commonwealth to address barriers to competition under the current Default Service program, as well as to provide consumer savings and equity among customers.

The Compact's experience is that many consumers have been extremely frustrated over the pricing differential between Standard Offer and Default Service, particularly in light of the fact that customers pay the higher Default Service rates for electricity when they move to a meter location that was previously subject to Standard Offer. Other customers have been erroneously switched to Default Service from Standard Offer. Customers were also frustrated by the fact that they were, on the one hand, urged to find a competitive supplier, but on the other hand there rarely was a supplier willing to serve them. For those few customers who had some potential alternative supplier, customers lacked the ability to meaningfully evaluate the power supply proposal and contract terms being offered.

Consistent with consumer complaints about Default Service, many commenters noted that access to the competitive market is a particular problem for residential and small commercial and industrial customers.¹ DOER Initial Comments, pp. 10-11; Massachusetts Electric Company Initial

¹ Customers correctly ask why they must pay the cost of "new supply" at market rates but are simultaneously required to pay transition costs for supply commitments incurred prior to their becoming a customer.

Comments, p. 6; Competitive Retail Suppliers Initial Comments, pp. 7-8; NSTAR Initial Comments, p. 4; Attorney General Initial Comments, p.1. A variety of untested and conflicting proposals to address service for these consumers has been suggested.

The Compact began to examine issues related to Default Service at the time of the announcements in the Summer and Fall of 2000 of the price divergence from Standard Offer which triggered many of the consumer complaints. The Compact developed educational tools, conferred with NSTAR, posted information on public access stations, discussed the issues with local media and disseminated a list of conditions in which consumers were exempt from enrollment in Default Service. The Compact also began to consider market-based solutions, which led to the formulation of a Pilot Program to utilize municipal aggregation to gain competitive supply for Default Service customers.

Municipal aggregation presents opportunities to represent the interests of large blocks of Default Service customers into the competitive market under an approved, regulated, politically responsible, and consumer-friendly process. Municipal aggregation can also be achieved with relatively low costs and is consistent with the existing terms of the Electricity Restructuring Act, as set forth in Chapter 164 of the Acts of 1997 (the “Restructuring Act”).² Further expansion of municipal aggregation in the Commonwealth also has been advocated by other commentators, including Mass Energy Consumers Alliance, the Union of Concerned Scientists, and the City of Newton. Therefore, the Compact recommends that the Department encourage additional pilot programs similar to what the Compact is conducting for former Default Service customers in Barnstable and Dukes Counties.

Through its Pilot Program, the Compact has successfully moved customers from Default

² There are modest changes to the Restructuring Act that could promote and enhance municipal aggregation, as discussed *infra* at pages 4-5, 7 and 9.

Service to competitive supply. The Compact's Pilot is the largest program in Massachusetts, in terms of numbers of customers, providing competitive choice to residential and small businesses as well as all other Default Service customers. Approximately 40,000 former Default Service customers in Barnstable and Dukes Counties are receiving competitive supply through this program. In the process, customers have experienced substantial savings over Default Service pricing. For May and June of 2002, the Compact's Pilot Program saved customers twenty-two percent from the Default Service price. For the period of July through December 2002, there will be an eleven percent savings from the Default Service price. As the price of Standard Offer is anticipated to reach 5.1 cents/kWh in 2004, follow-up service to the Pilot Program could even become more attractive than Standard Offer pricing, allowing municipal aggregation to provide competitive supply and savings for these customers as well.

Consumers who participate in the Compact's Pilot Program have an opportunity to opt-out and remain on Default Service, as well as the opportunity to choose another competitive supplier at any time. Response to the program has been very positive. Only one percent of eligible customers have chosen not to participate in response to an "opt-out" notification. The response of former Default Service customers has also been very positive. In addition, tracking of the customer service center on customer attitude has shown calls run on average at a 20:1 positive ratio. Several customers have even asked why the Compact/Mirant supply was not available to them sooner.

While the Department approved the design of the Compact's Pilot later in the Fall of 2001, actually negotiating and consummating a supply contract and working through customer notification, education, EBT and other such issues was a time-consuming and challenging process which the Compact completed this past Spring. For instance, the Compact encountered several difficulties in the

competitive market process for small residential and commercial customers when soliciting power supply for its Pilot Program. First, local distribution companies did not appear to be prepared for large numbers of small consumers to transfer to competitive supply. Electronic transfer protocols had to be improved. Second, the “settlement” process and disputes over retail billing between a local distribution company and supplier caused uncertain costs and risks for suppliers. Finally, bad debt risks created additional uncertainties for suppliers who, under the present system, had to absorb all of these risks without recoupment.

Without a clear resolution of these issues, pricing of supply was more difficult to formulate, and given the thin profit margin, a number of suppliers who expressed interest could not gain the support of their management to proceed with contract negotiations based on uncertainties in pricing. The problem was exacerbated because the default price was fixed for only six month terms, and all of the other costs of providing Default Service (such as administration, overhead, and bad debt) were not included in the retail “price to beat.” Fortunately, a pricing window opened that offered the Compact a reasonable prospect to remain below the default price beyond 2002, and NSTAR, Mirant, and the Compact worked cooperatively to resolve through customer transition, enrollment, and subsequent billing problems. The Compact, Mirant and NSTAR continue to work to resolve these specific customer billing problems.³

The Compact recommends that the Department continue to consider and implement appropriate changes to address these problems in order to facilitate development of municipal

³ There have been ongoing problems regarding special billing customers (direct or electronic pay, budget billing, statement billing) but these appear to be on a path to resolution.

aggregation and competitive supply. Expedited review of municipal aggregation competitive supply contracts may assist in this process. In addition, the Compact urges the Department to retain its flexible approach in approving pilot programs that serve only Default Service customers, rather than all customers in a service territory. Under G.L. c. 164, § 134, municipal aggregators must: (1) obtain necessary governmental approvals; (2) consult with the Commonwealth's Division of Energy Resources ("DOER") and consumers in the development of an aggregation plan; (3) provide for universal access; (4) design plans so as to ensure reliability; (5) provide for equitable treatment of all classes of customers; (6) set prices at a level that will not exceed Standard Offer prices; and (7) establish a customer education plan to inform customers about the aggregation plan and their ability to opt-out. G.L. c. 164, § 134. If the statutory requirement of providing for universal access were changed to allow a plan to serve only Default Service customers without special consideration as a pilot, municipal aggregators may become more willing to establish such programs. However, the problem of only providing for Default Service customers will become moot in March of 2005, when all Standard Offer customers will be switched to Default Service.

- 2) The local distribution company should remain as the provider of Default Service, at least in the near term, and customers should not be involuntarily assigned to competitive suppliers by the distribution companies.**

The Compact concurs with the Attorney General that the Department should not allow a distribution company to assign a customer without prior consent or affirmative choice, "even if the assignment is a 'virtual' assignment." Attorney General Initial Comments, p. 4. Under G.L. c. 164, §1F(8)(a)(i), "each customer choosing a generation company or its affiliate, subsidiary, or parent

company, or a supplier or aggregator shall be required to affirmatively choose such entity. It shall be unlawful for a generation company, supplier or aggregator to provide power or other services to such a customer without first obtaining said affirmative choice from the customer.” G.L. c. 164, §1F(8)(a)(i). Under G.L. c. 164, §1F(8)(a)(ii), the term “affirmative choice” means “the signing of a letter of authorization, third party verification, or the completion of a toll-free call made by the customer to an independent third party.” G.L. c. 164, §1F(8)(a)(ii).

The Compact believes that this “anti-slamming” provision of the Restructuring Act provides valuable consumer protections, and should therefore be maintained for Default Service customers. Therefore, the Compact opposes the auction proposal of the Massachusetts Electric Company (“Mass. Electric”), and cannot endorse the virtual assignment proposal of the DOER. The Mass. Electric and DOER proposals do not comply with the “affirmative choice” mandate of G.L. c. 164, §1F(8). The Compact believes that there is no authority for these proposals under current statutory law. The Compact also does not support PG&E’s ballot proposal, because small commercial and residential Default Service customers currently lack the information necessary to make informed decisions about their electricity suppliers, and such a campaign for customers could quickly devolve into a high-priced public relations battle to the detriment of consumers. While the Compact cannot support these proposals, it urges the Department to consider a full range of alternatives, including community choice, to bring competitive supply and cost savings to all consumers, not just those with the economic leverage or individual load characteristics sufficient to negotiate their own supply contracts.

3) The Compact supports municipal aggregation plans because the democratic

processes involved in such plans provide important consumer protections.

The Compact also recommends municipal aggregation over involuntary assignment or auction proposals because the democratic processes involved in such plans provides important protections for consumers. Municipal aggregation programs provide for public meetings where citizens can express comments and concerns to their elected officials. The responsibility of these elected officials to their constituents ensures important safeguards for consumers in the competitive markets. If the municipal aggregation program is not responsive to the needs of consumers, the elected officials who created the program could be voted out of office or subject to other political ramifications. Under the Restructuring Act, a municipality, acting either individually or in concert with other municipalities, is authorized to contract for electric power and energy services for electricity consumers within its boundaries. G.L. c. 164, § 134(a). By including this provision in the Restructuring Act, the Legislature recognized that a retail electric customer might have better access to lower energy prices in a restructured electric market through the purchasing option of belonging to an aggregated governmental group, rather than entering the market on an individual basis. The Legislature also recognized that the needs of each community might be different with regard to aggregation. Therefore, while the Restructuring Act delineated the parameters of the aggregation process and outlined what items a plan must contain, it also gave municipalities the ability to create an aggregation plan more precisely tailored to meet the needs of the electricity customers within each community or regional grouping.⁴

⁴ Recognizing that regional governments do not exist in most areas of the Commonwealth, there may be a need to provide special assistance to smaller communities which lack the resources and/or load characteristics to function as an effective aggregator.

The Department has maintained a flexible approach in approval of municipal aggregation plans, provided the aggregator can demonstrate that its plan is consistent with the Restructuring Act. See DTE 00-47, Order, 8-10-00, Section VI(A). G. L. c. 164, § 134(a) establishes specific approvals and consultation required by a municipal aggregator.

First, G. L. c. 164, § 134(a) requires that a municipality or group of municipalities obtain the approval of local governing entities prior to initiating a process to develop an aggregation plan. For example, each town participating in the Compact's Aggregation Plan signed the Inter-Governmental Agreement of the Cape Light Compact, which authorizes the Compact to pursue the type of aggregation process included in the Aggregation Plan. Second, G.L. c. 164, § 134(a) requires that a municipality must consult with DOER in developing its aggregation plan and must provide detailed information to consumers regarding the aggregation activities. The Compact met numerous times with DOER in the development of its Aggregation Plan. In addition, the Compact held a substantial number of public meetings and hearings aimed at educating consumers about the Compact and the Aggregation Plan; each town held town meetings or town council meetings to approve the decision to provide opt-out municipal aggregation. Finally, G.L. c. 164, § 134(a) requires that a municipal aggregation plan filing describe (1) the organizational structure, operations, and funding; (2) rate setting and other costs to participants; (3) the method for entering and terminating agreements with other entities; (4) the rights and responsibilities of participants; and (5) termination of the plan. G. L. c. 164, § 134(a) also requires that municipal aggregation plans provide for universal access, reliability, and equitable treatment of all classes of customers. In keeping with these provisions, the Compact's Aggregation Plan is available to all electric consumers located in the Compact's member towns. In addition, customers who move into a

member town after the start of the Power Supply Program are eligible to participate.

4) The Compact supports longer terms of procurement for small commercial and residential customers on Default Service.

Based upon its experience negotiating its Pilot Program for former Default Service customers, the Compact supports longer terms of procurement for small residential and commercial customers on Default Service. In negotiating its Pilot Program with competitive suppliers, the Compact experienced difficulty obtaining a multi-year competitive supply contract against a six month default price. This problem could be remedied through the institution of a series of two year contracts as DOER suggests, or even longer. Longer term prices also avoid market volatility by allowing the staggering the contracts and changes in the forward-going price curve that reflect market pricing. Although one commentator (Fitchburg Gas and Electric) claimed in its initial comments that this will present a “price cap” and dampen competition (Fitchburg Gas and Electric Initial Comments, p. 5), a Default Service design with a short term fixed price can dampen competitive supply to a greater extent.

5) Default Service should not substitute for a retail marketplace.

The Compact also opposes making competitive suppliers the providers of Default Service, because Default Service should not substitute for a retail marketplace. In DTE 99-60-A at 4, the Department stated that Default Service should function as a basic service that provides consumers with the appropriate incentives to turn to the competitive market. The Compact agrees with the Attorney General that Default Service should be a “‘plain vanilla’ service and not attempt to be all things to all people.” Attorney General Initial Comments, p. 4. Therefore, the Department should avoid innovative Default Service designs with no empirical application in the absence of a conclusive demonstration of

benefits or the absence of material risks for consumers. Toward this end, and although the Compact strongly supports principles of renewable energy and conservation, the Compact is concerned that “green power options” offered to consumers *under* Default Service (as opposed to competitive supply) would not be beneficial. Such proposals may confuse true competitive supply options with Default Service and could set a precedent for other options for Default Service that would unintentionally create barriers to competition. The Compact believes that green power options would be effective, and more properly belong in, the competitive market. The Compact is in the process of developing a green power program on an opt-in basis, and will be able to quantify consumer interest in this type of competitive power supply. The Department should maintain the position that Default Service should not substitute for competitive supply.

6) Pricing for Default Service should be reformed to include administrative costs, bad debt costs, and congestion costs.

The Compact also joins with the majority of commentators who contend that Default Service pricing should include administrative costs, bad debt costs and congestion costs. The price for Default Service should reflect no more or less than the costs incurred to procure supply from the competitive market. Therefore, it is appropriate that pricing includes administrative costs for procuring Default Service supply, as well as the costs related to unrecovered bad debts.

Furthermore, in order to promote competitive markets, duplicate tasks and costs for utility functions and competitive supply functions should be reduced or eliminated to the extent practical. These charges include customer service notifications, meaning the coordination of communications with

utility mailings (such as customer notifications), especially for municipal aggregations in which tens of thousands of customers are to be notified. The Compact also urges the Department to make changes in the use of electronic transfer of customer information through a “value-added-network” (“VAN”). For municipal aggregators such as the Compact, VAN charges for competitive supply to all customers could amount to \$20,000 per month, which over a four year contract would total nearly one million dollars.

Although the Compact supports including congestion costs in the price for Default Service, the Compact opposes having small residential and commercial customers pay average locational market pricing over the service area of the entire local distribution company (“LDC”). Any plan to include location pricing in the price of Default Service should take into account the significant differences among communities and regions within the various service areas of the LDC. Otherwise, some communities would be forced to pay an unfair subsidy to other groups of customers. Therefore, the Compact cannot support the DOER’s proposal for averaging locational marginal pricing and believes more precise tailoring of locational pricing deserves further study.

Respectfully submitted,

CAPE LIGHT COMPACT

By its attorneys:

Jeffrey M. Bernstein, BBO # 041190
Elizabeth M. Heller, BBO # 64725
BERNSTEIN, CUSHNER & KIMMELL, P.C.
585 Boylston Street, Suite 200

Boston, MA 02116
(617) 236-4090 (voice)
(617) 236-4339 (facsimile)
jbernstein@bck.com
eheller@bck.com

On the comments:

Scott Ridley
Ridley & Associates
115 Kendrick Road
East Harwich, MA 02645

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